

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HEINRICH WULFERT and RICHARD A. BEHR

Appeal No. 2001-1845
Application 09/093,454

ON BRIEF

Before FRANKFORT, McQUADE, and BAHR, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

ON REQUEST FOR REHEARING

This is in response to appellants' request for rehearing of our decision mailed March 28, 2002, wherein we affirmed the examiner's rejection of claims 1 through 3, 6 through 13 and 16 through 18 under 35 U.S.C. § 102(b) as being anticipated by Pracht (U.S. Patent No. 4,506,482) and the rejection of claim 19

under 35 U.S.C. § 103 as being unpatentable over Pracht. As was indicated in the paragraph bridging pages 3 and 4 of that decision, since our reasoning was considerably different from that set forth by the examiner, we denominated our affirmance as a new ground of rejection under 37 CFR § 1.196(b).

We have carefully considered each of the points of argument raised by appellants in their request for rehearing, however, those arguments do not persuade us that our decision was in error in any respect.

Appellants urge in the request (page 1) that this panel of the Board has misapprehended the teachings of the cited Pracht patent in affirming the above-noted rejections. We do not agree. More particularly, appellants contend that our findings and conclusions based on Figure 4 of Pracht and discussions following therefrom rely on extrapolation and misapprehension as to the teachings of Pracht, because Figure 4 of the patent shows a single prefabricated panel connected to a single story of a building structure and does not provide any disclosure regarding any relationship with other stories of the multi-story building structure. We have evaluated appellants' points of argument, but

stand by our findings and conclusions set forth in the decision mailed March 28, 2002.

Unlike appellants, we view the showing in Figure 4 of Pracht and the discussion thereof in that patent as being directed to one embodiment of Pracht's invention wherein each architectural panel (22) of a multi-story building is attached to the building structure in a spandrel panel manner like that depicted in Figure 4, i.e., wherein each panel is cantilevered off of the building structure frame (65) of a single story or floor and would thus be structurally decoupled from panels associated with other stories or floors of the multi-story building similarly attached to their associated story or floor. Contrary to appellants' assertions, we find no reason to conclude that the showing in Figure 4 of Pracht and the teaching we take therefrom is limited to a single story building. While it is true that Figure 4 does not show additional stories, it is clear to us from a reading of the patent as a whole that this Figure is representative of one method for attaching the panels (22) of Pracht to a multi-story building.

As for appellants' assertions with regard to window panels necessarily being included in the building as shown in Figures 1 and 10 through 13 of Pracht, and the weight to be accorded the declaration of Richard A. Behr, we remain of the view expressed on pages 7 and 8 of our earlier decision.

Regarding appellants' argument that the flexible means (74, 78) of Pracht seen in Figures 6 and 7 are illustrated for a vertical seam and only used between panels on the same story, we again find appellants' view of the teachings in Pracht to be too narrowly focused. The disclosure in column 5 of Pracht, following the discussion therein of Figure 4, is that with all panels installed on the building, the joints between adjacent panels are sealed to form a contiguous weathertight wall surface and that the preferred means for sealing the joints between adjacent panels is shown in Figure 7. In our view, this disclosure in Pracht applies to adjacent panels attached to a single floor of the building (i.e., vertical seams), as well as to adjacent panels on adjacent floors of the multi-story building (i.e., horizontal seams) so as to provide the contiguous weathertight wall surface desired by the patentee.

Appeal No. 2001-1845
Application 09/093,454

As for appellants' comments on our treatment of dependent claims 2, 3, 12 and 13, we see no reason to change our view as set forth on page 6 of the earlier decision. The broad recitation that the steel anchor frames of appellants' invention are "rectangular in configuration" does not distinguish over the anchor members (68, 70, 72) of Pracht which we view as each broadly constituting a frame that is "rectangular in configuration," at least in plan view. Appellants have not in the claims on appeal defined a steel anchor frame with vertical and horizontal members connected together to define a rectangular frame like that depicted in Figure 3 of the application drawings (at 38).

In light of the foregoing, appellants' request is granted to the extent of reconsidering our decision, but is denied with respect to making any changes therein.

Appeal No. 2001-1845
Application 09/093,454

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

DENIED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. McQUADE)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JENNIFER D. BAHR)	
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Appeal No. 2001-1845
Application 09/093,454

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